UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH OFFICE

CSC HOLDINGS, LLC and CABLEVISION SYSTEMS, NEW YORK CITY CORPORATION	
And	**Case Nos.**
	29-CA-134419
COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO	**29-CA-135428**
	29-CA-135822
	29-CA-136512
	29-CA-136759
	29-CA-137214
	29-CA-142425

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Gabrielle Semel, Esq. and Colleen Campbell, Esq., counsel for the Charging Party.

Decision

Statement of the Case

Raymond P. Green, Administrative Law Judge. I heard this case on various dates from June through October 2015. The charges and amended charges were filed on various dates in 2014. The initial consolidated complaint was issued on November 6, 2014, and this has been amended on a number of occasions, both before and after the hearing opened. Ultimately, the substantive allegations were as follows:

1. That on July 29, 2014, the Respondent, in violation of Section 8(a)(5) of the Act, without notifying or offering to bargain with the Union, **(a)** implemented a new rule that required employees to input their work start times upon arrival at job locations instead of when leaving for job locations; **(b)** implemented a new system for disciplining employees for entries in the Estimated Time of Arrival (ETA) system and; **(c)** imposed a written warning to Eric Ocasio because of the changes noted above. Although the complaint initially alleged that the

Respondent disciplined Ocasio because of his union and/or protected concerted activity, that allegation was dropped. [1]

2. That on various dates in July and August 2014, the Respondent by various agents, solicited employee complaints and grievances and promised increased benefits and improved terms and conditions of employment if they abandoned their support for and membership in the Union.

3. That on March 3, July 7, July 31, August 6 and August 7, 2014, the Respondent issued disciplinary warnings to Jerome Thompson because he assisted the Union and engaged in protected concerted activities.

4. That on August 7, 2014, the Respondent, at its Bethpage facility, threatened to cause the arrest of Thompson because he was engaging in concerted activity.

5. That on or about August 20, 2014, the Respondent discharged Thompson because of his union and/or protected concerted activities.

6. That on September 9, 2014, the Respondent, by James Dolan, at a meeting **(a)** threatened employees with continued loss of a pay increase if they voted in an Employer's sponsored poll to keep the Union as their bargaining representative; **(b)** threatened to withhold new technology and training if they voted for the Union; **(c)** impliedly threatened employees with job loss if they supported the Union; **(d)** promised to increase wages if employees voted against the Union; and **(e)** promised to pay the Union if it disclaimed an interest in representing the employees.

7. That on September 10, 2014, the Respondent, by the Honest Ballot Association, engaged in surveillance and created the impression of surveillance by **(a)** requiring employees to present identifications to vote; **(b)** assigning employees a unique personal identification number in order to vote; and **(c)** watching employees as they voted.

8. That by conducting the aforesaid poll, the Respondent engaged in illegal interrogation contrary to the criteria set forth in *Struksnes*, 165 NLRB 1062 (1967).

9. That the Respondent gave material support to anti-union employees by providing t-shirts to employees and paid time off to attend a City Council meeting in December 2014.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed, I make the following

Findings and Conclusions

I. Jurisdiction

It is admitted and I find that the Respondent is an employer engaged in commerce within the meaning of Section 2(1), (6), and (7) of the Act.[2] I also find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

[1] At the time of the hearing, Ocasio had left the Respondent's employ for another job.
[2] The Respondent stipulated that Cablevision and CSC Holdings constitute a single employer within the meaning of the Act.

II. The alleged unfair labor practices

(a) Background

Cablevision is a company that provides television, telephone, and internet services. In New York City, it does so pursuant to a license agreement with the City of New York. Its headquarters and principle place of business is located in Bethpage, Long Island, and it has facilities in Brooklyn and the Bronx.

In August 2011, the Union commenced its efforts to organize employees of the Respondent who were employed at three locations in Brooklyn, New York.[3] The Union filed a representation petition in Case 29-RC-07089 on December 9, 2011. After winning the election, the Union was certified on February 7, 2012. The certified bargaining unit was as follows:

> **Included:** All full-time and regular part-time field service technicians, outside plant technicians, audit technicians, inside plant technicians, construction technicians, network fiber technicians, logistics associates, regional control center (RCC) representatives and coordinators employed by the Employer at its Brooklyn, New York facilities.
>
> **Excluded:** All other employees, including customer and human resource department employees, professional employees and supervisors as defined in Section 2(11) of the Act.

With respect to the bargaining unit, the employer operates out of three facilities in Brooklyn and employs approximately 280 unit employees.

Contract negotiations between the parties commenced in March 2012 and continued for a long time thereafter. A collective-bargaining agreement was ultimately reached on February 15, 2015.

During this period of time, the Union filed a number of unfair labor practice charges against the Respondent and there was a hearing before Judge Fish in 2014. Those allegations included assertions that the Respondent engaged in a variety of unlawful conduct before and after the election. Among the allegations, were claims that **(a)** the employer discharged 22 employees for engaging in a protected work stoppage, and **(b)** claims that the Company bargained in bad faith.

Judge Fish, after a 17-day hearing, issued a decision on December 4, 2014, in JD(NY)-47-14. In that decision, he made a number of findings that have been appealed by the parties. The Charging Party and the General Counsel seem to assume that I can conclude that there has been a substantial showing of antiunion animus based on the findings made in Judge Fish's Decision. This is incorrect. As the Board has not yet ruled in that case, any findings and conclusions that the Administrative Law Judge made are not binding and cannot be used by me to conclude that the Respondent evidenced any antiunion animus. I am also in no position to agree with the assertion that the

[3] The Company provides cable television, phone and internet services in Brooklyn, Queens, the Bronx, Long Island, Westchester, and parts of New Jersey.

Respondent has violated the Act in the past and is therefore a "repeat offender." *Long Ridge of Stanford*, 362 NLRB No. 33 at fn. 3 (2015).

On February 15, 2013, an employee filed a decertification petition in 29-RD-098466. Pursuant to that petition, an election was sought to determine if the employees still wished to be represented by the Union. But that petition was dismissed on April 30, 2013. A second decertification petition in 29-RD-138839 was filed on October 16, 2014. This too was dismissed on November 12, 2014, presumably because there existed, at the time, unresolved unfair labor practice charges.

Nevertheless, despite all of this prior litigation, the parties managed to reach an agreement on February 15, 2015, which took effect before the trial in this case opened.

(b) The Alleged Unilateral Change Regarding ETAdirect

The complaint as amended alleges that on or about July 29, 2014, the Respondent, without notifying or offering to bargain with the Union, implemented a new rule that required employees to input their work start times upon arrival at job locations instead of when leaving for job locations. It also alleged that the Respondent implemented a new system for disciplining employees who make incorrect entries in the Estimated Time of Arrival (ETA) system. Because it is alleged that the Respondent failed to bargain about these alleged unilateral changes, a final warning to employee Eric Ocasio is alleged to have violated Section 8(a)(1) and (5) of the Act. (As previously noted, the complaint's allegation that this warning was issued because of Ocasio's union activity was withdrawn).

The Respondent basically argues that no significant change was made in the reporting requirements during any relevant time period. It also argues that it has always maintained a policy that discipline is appropriate when an employee falsifies information that he or she is required to provide to the Company. In this respect, the Respondent argues and the evidence shows that Ocasio did, in fact, deliberately failed to report his location and times in relation to the incident that led up to his warning.

Most of the employees involved in this case work out in the field and are assigned each day to a series of appointments. These are mainly to fix problems that have been called in by customers.

In or about January or February 2011 (and well before the Union began its organizing campaign), the Company instituted an electronic system (called ETA) whereby its field employees, using portable devises, would enter their start times when they arrived at each job assignment.[4] At the start of each day, the day's schedule would appear on each technician's device. The procedure was that when the technician left the Company's depot, he was to click on a screen icon and then click on an icon when he arrived at his first scheduled appointment. After completing the appointment, the technician has to click on an icon that indicates that he is leaving that job and then click on an icon when he arrives at the next scheduled job. This process is repeated

[4] Initially, the system was installed on a smart phone that was issued to each technician. Later, the technicians were given I-pads. After 2015, the ETA system was replaced by another system and was only used as a backup.

throughout the day and the entries are transmitted so that his supervisor and/or the dispatchers can determine when and where he is during the course of the day. Obviously, if a technician fails to click on the icon when he arrives or leaves a jobsite or clicks on the icon before he arrives, then the people who are given the task of coordinating the day's work for the technicians out in the field, will be unable to properly do their work.

Although some employees testified that they understood that they were required to enter the start time when they left to go to a job, the testimony of managers and other employees (including employees called by the General Counsel), credibly showed that the policy and practice has always been to enter the start time upon arrival at a jobsite and not before.[5]

Indeed, any contention that employees were instructed to enter their start times before they arrived at a jobsite makes no sense and would nullify the whole purpose of the ETA system.

The ETA system was not meant to replace a time clock or any similar system used to calculate the amount of hours worked by the employees for purposes of their compensation. In this regard, the system had and still has no relationship to employees' pay.

Basically the ETA system is a software system that links the field technicians to their supervisors and to the dispatchers. A major function of the system is to allow the supervisors and dispatchers to know where a given technician is at any given time so that if there is a need to shift an assignment, this can be accomplished. For example, if a technician is scheduled to make a certain number of calls during the day, but one or more of the customers cancels a call, then the dispatcher would be in a position to reassign the technician to another call in the event that another technician was backed up on his schedule. This therefore gives the Company some flexibility to deal with events as they develop during the day and helps avoid having customers waiting around for technicians who arrive late or not at all. In this respect, the ETA system is designed to enhance customer service and to avoid the wrath of home owners whose TV sets, internet connections, or phone services are on the blink. So given this function, if a technician enters incorrect information as to when he has started his jobs, the dispatchers and the respective supervisor, can't really know where he is physically at any given time and therefore can't know whether it is possible to shift his or other technician's schedules around to meet circumstances that may arise during the day.

Another function of the ETA system is to gather statistical information regarding how long various services take on average. This is done as an aid in scheduling the work of the technicians. It is not, however, done for the purpose of establishing any kind of productivity standards. Once again, if incorrect entries are made by technicians as to when they start and finish their job assignments, this would mean that the Company would not be gathering accurate information that is used to avoid potential customer complaints.

[5] For example, Yvette Marie Walker, a witness called by the General Counsel, testified that during ETA training, the employees were told that they were to start the job when they arrived at the job. Also, that they were told to enter end when they finished the job.

There was evidence that when ETA was introduced, some of the technicians expressed concern that it could be used to create production standards and that employee job performance might be judged based on those standards. The evidence was that employees were told that the data created by their use of ETA would not be used to judge them against any kind of standard and that they would neither be punished nor rewarded. Nevertheless, although employees were given assurances that their use of the ETA system would not be used to discipline them in relation to a production standard, they were *not* told that they were free to enter incorrect information into the ETA system. That is a wholly different matter.

The only evidence relied on by the General Counsel in support of the alleged unilateral change in the ETA procedure is the fact that Eric Ocasio received a final warning on July 29, 2014. In this regard, it seems that the theory is that because Ocasio received an actual warning for failing to follow the correct ETA procedure, this was a change in company policy and therefore could not be made without giving the Union an opportunity to bargain. The warning stated as follows:

> You are being issued a Final Warning for falsification of work time in ETA direct and your work orders.
>
> Several times on July 10, your supervisor went to your work site to perform QCs.[6] At least twice, you were not at your work site as you indicated in ETA Direct and on your work orders submitted. You are expected to be at the job assigned and your start and end time must be accurately reflected in ETA Direct and on the work orders signed by customer.
>
> To help us maintain customer satisfaction and keep things running smoothly, we expect all employees to be at their work sites ready, willing and able to work at the beginning of their regularly scheduled workday. Employees who are late or who otherwise do not adhere to work schedules may have their performance reviews affected or be subject to corrective action up to and including suspension or termination of employment.

The evidence convinces me that there never was a change in the way that technicians were supposed to enter their start and finish times and that Ocasio simply chose to ignore that procedure for reasons unknown to me. Moreover, the evidence establishes that Ocasio did so deliberately and not by mistake. Thus, the fact that other employees such as Coleman and Riggs, did not receive warnings for unintentional mistakes, can hardly be cited to demonstrate that a new policy was initiated on July 29, with the issuance of the Ocasio discipline.

The evidence shows that the Company has always had a policy that prohibits employees from falsifying records or making false reports. (Does a company have to explicitly state such an obvious policy? Are we to assume that in the absence of an expressly stated policy, a company's default policy is to tolerate false reports by its employees?)

[6] The supervisors of each team of field technicians are required to go out into the field on a nonpredictable basis, to visit the technicians as they are working on an assigned job.

Respondent Exhibit 12 is a document issued in 2011 entitled Field Operations Training: ETA direct Guidelines. It states:

> As always, please verify immediately upon receipt that your pay statement accurately reflects your hours worked for the pay period. If you identify any discrepancy or issue, notify your supervisor or Employee Relations representative immediately. It is a violation of Company policy for any employee to falsify Company documents including but not limited to time reports. It also is a serious violation of Company policy for any employee or manager to instruct another employee to incorrectly or falsely report hours worked or alter another employee's time report to under or over report hours worked and such individuals will be subject to discipline up to and including termination of employment.

The evidence shows that two employees received formal disciplines in very similar circumstances as Ocasio and that these occurred well before July 29, 2014, which is when the General Counsel claims that the unilateral change occurred. For example, a final warning and a 3-day suspension was issued to James Best on October 8, 2013. This stated:

> On September 7th you cancelled an 11-2 pm trouble call. You confirmed another job that started on 1:37pm. When I arrived at the site you were not there until 2:17pm. When asked why you were not there, you told me that you went home to get a part for the drill. By that time, RCC had contacted the customer and was told that you had not started the job yet.

The record shows that a warning was also issued to an employee named David Gifford in another similar situation. This warning which was issued before the Ocasio warning stated:

> David Gifford is on a final written warning. The business recommends that David's employment should be terminated because he falsified his work orders and time in ETA direct. David's supervisor (Patrick Golding) observed David sitting in his truck when ETA shows that he was closing his 2nd job. David delayed his work time and then called in later to cancel an install job. In addition David's last job on the work order shows that he worked from 4-5 p.m. and on ETA it took 24 minutes from 4:32 – 4:56 pm. It took David an hour to arrive at the depot at 6:00 p.m.

The evidence therefore shows that on occasions prior to Ocasio's warning and well before the date of the alleged unilateral change, the Respondent has issued warnings to employees whom it believed had failed to make the proper ETA entries during the day. Indeed, as indicated by the warning issued to Gifford, his infraction was considered to be a dischargeable offense. To my mind, this belies any contention that a unilateral change in policy was made when the Company issued a final warning to Ocasio on July 29. He clearly falsified his ETA records by not entering the correct times that he began and finished his job assignments for the day in question. I therefore shall recommend that this allegation of the complaint be dismissed.

(c) Alleged Solicitation of Grievances

As amended, the complaint alleges that on various dates in July and August 2014, the Respondent by various agents, solicited employee complaints and grievances and promised

increased benefits and improved terms and conditions of employment if they abandoned their support for and membership in the Union.

In my opinion, the evidence does not support this allegation. I note here that the complaint does not allege that the Respondent violated the Act by telling employees that any adverse employment action resulted from their support for the Union.

In order to establish a violation of these allegations, the General Counsel has to establish not only that the Respondent solicited grievances, but that it made an express or implied promise to remedy those grievances. *Uarco Inc.*, 216 NLRB 1 (1974); *Genzer Tool and Die Corp.*, 268 NLRB 330 (1983). In *Chartwells*, 342 NLRB 1155, 1157 fn. 7 (2004), the Board held that a Respondent violated Section 8(a)(1) by soliciting grievances *and* by impliedly promising to remedy them.

In the summer of 2014, the Company reassigned various managers and supervisors to the Brooklyn offices. A meeting was held on July 18, 2014, at the 96th street Depot in which about 50 technicians were in attendance. Barry Monopoli started the meeting by introducing some of the new supervisors and stating that the employees should give them a chance. Monopoly stated that he wanted to have the meeting in order to obtain feedback from the Brooklyn technicians. Stating that he had heard that some people had complained that the Company had ceased having their annual barbeques, he indicated that it was thinking about resuming that practice. (In the past and recommencing in 2014, the Company held and paid for an after hours barbeque for employees).[7] After this announcement, Monopoli solicited questions from the technicians. The first comment seems to have been made by Union Shop Steward Reynold Meyers who said that the employees were not interested in barbecues and that they wanted a contract. In response, Monopoli stated that he was not there to talk about the contract negotiations. It seems that an employee initiated a discussion about how to identify "repeat calls" so that technicians would not be held responsible for certain types of repeat calls. There was no evidence that any promises were made or implied.

Another set of meetings was held on July 30, 2014, and these were conducted by Robert Comstock, the Company's executive vice president of operations. As in the earlier meeting, Comstock opened the floor for employee comments and questions. There is no dispute that at this meeting, employees raised a number of issues regarding their pay and terms of employment. Specifically, a major complaint was that that the employees in Brooklyn had not gotten parity with respect to increases given to employees at unrepresented locations. Employees also complained that there was a lack of promotional opportunities in Brooklyn and that certain new technology that had been deployed elsewhere had not been deployed in Brooklyn. Another complaint was that the Company should fix its work rotation system so that employees would share the burden of working in undesirable areas.

In relation to the meetings held on July 30, Comstock's testimony was that after stating that he would take questions, he explicitly told the employees that he could not address questions that related to subjects that were part of the collective-bargaining process; that these had to be negotiated at the bargaining table and that he could not talk about them. This was

[7] In fact, the Company did reinstate the barbeques at its three Brooklyn locations in July 2014. There is no allegation in the complaint that by doing so, the Respondent violated the Act. There will be more to say about the barbeques when we get to the allegations involving Jerome Thompson.

corroborated by other persons who were at these meetings including Lawrence Hendrickson, a witness called by the General Counsel.[8]

On August 5, the Company held a meeting at the 96th street depot. This meeting was conducted by Thomas Lynch, the area operations manager. At this meeting, a video was shown wherein Kristin Dolan talked about how Cablevision could win back customers. After the video was shown, the floor was opened up for questions and some asked when Tech Mobility would be deployed in Brooklyn. In this regard, Tech Mobility is basically an upgraded ETA software package that was deployed to technicians at other locations. It eventually was employed at the Brooklyn locations and is an advanced version of the ETA system that had been used to facilitate the scheduling and rescheduling of technicians in the field. In any event, the General Counsel's witnesses assert that Monopoli told them that Tech Mobility had not been deployed in Brooklyn because this was something that was the subject of bargaining and that "you guys voted for a union . . . " Whether or not the issue of deploying Tech Mobility was actually discussed during bargaining, the evidence here is that no one from management promised to do anything about that question during the meeting.

A group of meetings was held on August 6, 2014. Speaking for the Company were, Comstock, Monopoli, Matt Lake, Pergash Kasimura, and Mark Counsar. The purpose of these meetings was to describe the Company's efforts to rebrand its services and to stress the importance of branding. It is clear that the purpose was not to solicit or discuss any employee grievances or terms of employment. Indeed, employees were explicitly told that the Company could not discuss any issues that were being discussed in the negotiations. In any event, the General Counsel cites to the fact that Jerome Thompson stated that the Company's failure to give the Brooklyn employees parity was a stain on the brand and that he asked what the Company was going to do to fix this situation. Monopoli replied that "you guys made a conscious decision to [select] the third party to represent you" and "that being said, you have to really pose that question to them because they're the ones who now speak for you and represent you at the bargaining table."

A recording of one of August 6 meetings was introduced into evidence and we will come back to it when we discuss the allegations regarding Jerome Thompson because its is clear to me that what happened here precipitated his discharge on August 20. Suffice it to say at this point, that I see no evidence that the Company solicited grievances or promised to correct them.

The General Counsel cites meetings held on August 14 and 18, 2014. These meetings, as far as I can tell were meant to deal with operational issues and not with employee grievances or terms of employment; albeit some employees complained about the lack of parity with other locations regarding the tools and technology that was used in Brooklyn. There is no evidence that the Company's agents solicited grievances or promised to correct them.

At a meeting held on August 21, a video was shown to the employees. This featured Sandy Kapell, the Company's executive vice president of human resources. The video was thereafter made available on the Company's intranet to all of the technicians, including those appointed to be union shop stewards. The testimony of a General Counsel witnesses was that this was basically a propaganda video, to which he paid no mind. There is no evidence that any

[8] In response to a question as to what if any response managers made to employee gripes, Hendrickson testified; "That couldn't be discussed because that was something that they were bargaining for with the union."

grievances were solicited during this meeting and I am frankly at a loss to understand why this is cited in support of this allegation.

Finally, the General Counsel calls attention to a set of four meeting that were held on August 27, 2014. Again when the floor was opened for questions, employees asked about parity, tech mobility, changing the colors of the uniforms, and trucks etc. The response was that as these items were being dealt with in negotiations, the Company could not talk about them.

Based on all of the above, it is my opinion that the evidence fails to establish that the Respondent solicited grievances regarding employee pay or terms and conditions of employment. Nor can I conclude that the Respondent, at any time, promised to remedy any grievances. On the contrary the Respondent's managers made it clear that the employees had selected the Union and to the extent that issues were being negotiated with the Union, they could not discuss them at meetings with employees. I shall therefore recommend that this allegation be dismissed.

(d) The Kapell Video

As noted above, the Respondent on a couple of occasions in August 2014, showed a propaganda video to unit employees. It seems that to an extent, Kapell discussed the status of the contract negotiations; doing so from the Company's point of view. It is the General Counsel's theory that because the video talked about issues that were being discussed in bargaining, the Company violated Section 8(a)(5) of the Act by refusing to provide a copy of the video to the Union. I disagree.

Assuming that in this video a company official described, with company spin, the issues that were being discussed during negotiations, I do not understand why the Union would be entitled to it. At most, this is simply a propaganda piece that no doubt was understood as such by the employees. Clearly, the employer (or the Union), is entitled to inform bargaining unit employees as to their positions regarding contract bargaining and how they understand the negotiations are going. There is no evidence that this video contains any information that might legitimately be useful to the Union in relation to its bargaining position or strategy. Nor is there any indication that the video contains information that might be relevant to any pending grievances.[9]

Moreover, this video was made available to all of the unit employees via the Company's intranet system and was viewed by union appointed shop stewards. Thus, although the Respondent refused to turn over a copy of the video, its content was not a secret and was readily available to employees and shop stewards, including employees who participated in the negotiations as part of the Union's bargaining committee.

As I conclude that the there is no reason to believe that the video contained any information (other than propaganda), that could be relevant to either the negotiations or to grievance handling, I find that the Respondent's refusal to turn over this video did not violate the Act.

[9] The Union and the Company, after the certification and during the negotiation process, established a grievance type of procedure whereby the Company agreed to notify the Union about disciplines. The parties agreed to have discussions about such disciplinary actions; albeit there was no arbitration procedure put into place.

(e) The allegations involving Jerome Thompson

Thompson began his employment in October 2004. Thereafter, he was promoted to the position of a CLI Tech. He worked in that job until his termination in August 2014.

Thompson was an active and open union supporter. He was on the original union/employee organizing committee. He attended various union rallies at which he spoke in public about his support for the Union. Thompson was one of 22 employees who were the subject of the prior unfair labor practice case wherein it was alleged that he and others who engaged in a work stoppage, were denied reinstatement when they offered to return to work.[10] In addition and probably more pertinent to the present case, Thompson authored and played songs in various forums that were supportive of the union. These songs were like modern hip hop versions of the Pete Seeger and Woody Guthrie songs popularized in the 1930s and 1940s. E.g. "The union maid."[11] Finally, although he was not on the Union's negotiating committee, Thompson was one of 16 shop stewards.

The Respondent does not dispute that Thompson was an active union supporter. It concedes that it was aware of this fact.

The amended complaint's allegations regarding Thompson are as follows:

1. That on or about March 3, July 7, July 31, August 6 and 7, 2014, the Respondent issued disciplinary warnings to Thompson because he assisted the Union and/or engaged in protected concerted activities.

2. That on August 7, 2014, the Respondent, at its Bethpage facility, threatened to cause the arrest of Thompson because he engaged in concerted protected activity.

3. That on August 20, 2014, the Respondent discharged Thompson because of his union and/or protected concerted activities.

In support of these contentions, the General Counsel and the Charging Party assert that evidence of antiunion animus has been demonstrated by various findings made by Judge Fish in the prior case. As that case is still pending before the Board based on exceptions filed by all of the unhappy parties, Judge Fish's findings and conclusions cannot be used as "proof" of antiunion animus in the present case.

The Respondent contends that all of the disciplinary actions, including the discharge, were justified by Thompson's misconduct. Indeed, implicit in the Respondent's presentation, was the idea that if anything, it leaned over backwards because it was aware of Thompson's union activity.

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[10] In that case, the Respondent contended that it had permanently replaced these 22 strikers and therefore, under prevailing law, had no obligation to recall them upon an unconditional offer to return to work unless the individuals who replaced them had left the Company's employ. The decision by Judge Fish was that these employees were not permanently replaced. He therefore concluded that the employer had an obligation to reinstate the strikers. That decision, as noted, is on appeal before the Board.

[11] According to Wickipedia, "Union maid" is a union song with lyrics written by Woody Guthrie in 1940. The melody is based on a song called Red Wing written by Kerry Mills.

Insofar as the allegations concerning the various disciplinary actions *prior to* Thompson's discharge, there is virtually no evidence of any antiunion animus by company's supervisors or managers specifically directed towards him. Perhaps this is because after the Board certification, the employer was represented by labor counsel and almost all company actions were vetted by counsel. This of course, does not mean that managers or supervisors did not engage in acts motivated by union considerations; but it does mean that the Company took care whenever it did act.

Nevertheless, the transactions that directly led to Thompson's discharge unambiguously involved his union activity. These were the playing of his union songs at three company sponsored barbeques on July 31, 2014; his prounion statements at a company meeting held on August 6, 2014; and the playing of his music on August 7 at the parking lot of the company's headquarters in Bethpage, New York. As will be shown later, it is my opinion that the transaction that actually triggered Thompson's discharge involved his statements made at a meeting on August 6 when he spoke up and criticized the Company for not agreeing to a union contract. To my mind, this was the key event in the decision to terminate Thompson and that everything else cited by the Company was simply thrown in to gild the lily.[12]

In any event, it is my opinion that the actions by Thompson on each of these particular days constituted union activity. So, if the Respondent discharged Thompson in response to this activity, then it did so because of his union activity. Therefore, the only possible defense resides in its contention that while engaging in this union activity, Thompson so far exceeded the bounds of propriety that it rendered his conduct unprotected. In this regard, the appropriate test is the one enunciated in *Atlantic Steel Co*., 245 NLRB 814 (1979). Thus, in *Goya Foods*, 356 NLRB 476 (2011), the Board reiterated this test as:

> Under *Atlantic Steel*, the Board considers four factors to determine whether an employee's conduct is so egregious as to lose the Act's protection: (1) the place of the discussion; (2) the subject matter of the discussion; (3) the nature of the employee's conduct; and (4) whether the conduct was provoked by the employer's unfair labor practices.

Over the course of his employment, Thompson received a number of warnings. He received two warnings in 2004 and one warning in 2012. These warnings, in my opinion, were too far removed in time to tell us anything about Thompson's work performance. However, during 2014 and before the incidents that led to his discharge, Thompson was involved in a string of incidents, some of which resulted in official warnings. Others did not result in warnings although the transactions were noted in his personal file.

On January 15, 2014, while exiting the mechanic's garage, Thompson managed to hit the top of his vehicle on the garage roll-up door because it had not yet completely opened. This resulted in the ladders being dislodged from the roof of his vehicle and some minor damage to the garage door. Thompson then left the garage without contacting his supervisor about the accident.

[12] Inasmuch as the August 6 meeting was recorded, there is no dispute as to what was said. A transcript of this meeting was agreed to by the parties.

On January 21, 2014, Thompson received a warning in relation to the above incident. Subsequently, Union Representative Gallagher spoke to company representative Hilber in an effort to reduce the harshness of the warning. Ultimately Hilber agreed to soften it to some extent.

The complaint does not allege that this warning was a violation of the Act. And the evidence is rather clear that Thompson was at fault in this situation and that the warning was deserved.

During February 2014, Thompson's supervisor was Andrew Daley. On February 6, Daley sent a memo to his superior, Strachan, complaining that Thompson had disrespected him after Daley spoke to Thompson about not being in his work clothes during a morning meeting. Thompson stated inter alia; "I am not feeling safe working with Mr. Thompson." This incident did not result in a disciplinary action.

On February 20, 2014, Daley was out and Thompson changed the sign-in log book without receiving permission to do so.

On February 21, 2014, Thompson had a couple of early morning confrontations with Daley. The credible evidence shows that when Daley told Thompson that he had no right to alter the log book, Thompson called him a liar and said that Daley should start no shit that morning. Daley also told Thompson that he was not properly dressed for work. Before leaving for the field, Daley distributed blue-tooth head sets to the technicians. According to Daley, when he handed one to Thompson, the head set was thrown at him and Thompson said that they could take their dispute out back. In this regard, Thompson testified that he didn't throw the head set; that he merely tossed it on the table. He also denies that he said anything about taking the dispute out back.

In an email chain from Daley to Strachan (copy to Angela King), Daley described this incident and stated; "I am beginning to feel very unsafe and uncomfortable working with Mr. Thompson. His unprofessional behavior is becoming too frequent and I need it to stop. I cannot work in an environment where I don't feel safe coming to work. . . . "

In relation to the events of February 21, Union Agent Roger Brian Young spoke to Thompson in preparation for his discussion with company representative King about the warning issued to Thompson. Young testified that Thompson told him that he did say to Daley; "don't start no shit with me today," and that he also said, "if we're going to do this, let's just go to the back and discuss it." Young testified that he asked Thompson; "What were you doing to do? Go out in the back and put up your dukes? Is that how you guys settle things around here?" According to Young, Thompson laughed and said; "no, no, HR is in the back."

Returning to the events on February 21, things went from bad to worse. After leaving the depot, Thompson hit another vehicle at around 10:30 a.m. Although Thompson asserted that the fault lay with the other driver, the police officer at the scene informed Daley that from what he could observe, the accident was Thompson's fault. The police report states in substance that the vehicle damages were consistent with the description of the accident given by the driver of the vehicle not driven by Thompson. In any event, Daley testified that he came to the conclusion that Thompson was involved in an avoidable accident for which he was responsible. Given the circumstances, that conclusion was reasonable.

On March 3, 2014, the Company issued a final warning to Thompson. The infractions listed were: (a) Failing to arrive at work in proper attire; (b) On February 20, changing his start time for Wednesday February 19 in the sign in logbook without permission; (c) On February 21, speaking to supervisor (Daley) in a threatening tone, calling him a liar and stating, "you better not start no shit with me this morning"; (d) February 21, refusing to take headset and throwing it back on the desk; (e) February 21, avoidable accident in the field. Also referenced in this final warning was the accident in the garage.

In my opinion, the credible evidence shows that the March 3, 2014 final warning was warranted in light of Thompson's behavior. Under *Wright Line*, I don't think that the General Counsel has made out a prima facie showing that this warning was motivated by anti-union considerations. Moreover, even if there was some evidence to suggest that such a motivation existed, I would conclude that based on Thompson's conduct, the Respondent would have taken the same action despite the fact that it was aware that he was a union activist.

In June 2014, the Respondent discovered that Thompson used his company issued cell phone to make numerous personnel phone calls. Although the company permits employees to use the phones to make personnel calls, it asserts that Thompson abused this privilege by making calls far in excess of anyone else. Some of the calls were made while he was on vacation in Las Vegas.

Thompson's use of the cell phone resulted in discussions between Paul Hilber, the Company's vice president of human resources and union representatives Tony Spina and William Gallagher. The result of these discussions was that a memorandum was issued to the technicians indicating the limits of reasonable personal use of cell phones. No warning was issued to Thompson in relation to this incident. Nevertheless, Hilber testified that he told the union representatives that "this is it" and that Thompson "doesn't have any more chances." There is no contention in the complaint that the Respondent, by this nonwarning about cell phone usage, violated the Act.

On July 31, 2014, the Company held barbeques for employees at its three Brooklyn locations. (92nd street, 96th street and street). These were held in the respective parking lots where the Company's vehicles are kept. The barbeques were held after work hours when the technicians returned from the field.

Thompson drove his car to each site while playing his union songs. Upon arrival, he opened his doors and played his music on his car audio system at a very loud level. He asserts that he played the music at 80 percent of capacity. At each location, he started loudly playing the music and shortly thereafter was either asked by management to turn it down or to not play one of the songs. In each case, Thompson, soon after being approached by managers, left each location and drove off. At one location, he may have lingered outside the fence for a short time before leaving.

It does not seem to me that the Company, as of the end July 31 and not until after August 6, actually intended to impose any discipline on Thompson based on his musical visits to the barbeques. Based on the testimony of Robert Comstock, it was he who actually initiated the process for Thompson's discharge and that he did so because Thompson interrupted a presentation about branding that was made to employees on

August 6, 2014. In my opinion, had the events of August 6 not happened, Thompson would not have been discharged or even disciplined for his actions at the barbeques. It seems to me that once a decision was made to discharge him, the Company added as a reason, the musical interlude.

Nevertheless, because the Respondent in its discharge decision cited the music incidents, I shall make the following observations.

The Respondent contends that Thompson, by interrupting the barbeques and loudly playing his union songs, placed his actions outside the protection of the Act. In this regard, the lyrics of his songs are in the nature of prounion propaganda and are not, in my opinion, of a nature to disqualify them from the Act's protection.[13] The issue then becomes how loud did Thompson play his music and to what extent did it interfere with the people who were at the barbeques. As various witnesses had differing opinions regarding the loudness of the songs, the Respondent subpoenaed Thompson's car for the purpose of having a demonstration. I agreed to this and both the Union and the Company secured the services of experts who would be called upon to measure sound levels from the car to various points within one of the barbeque sites.

The demonstration took place on October 19, 2015. Both the Union's and the Company's experts measured the decibel levels of the music at various distances from Thompson's car. This was done in my presence with the music played at 80 percent and at 100 percent of the car audio's maximum volume. From my observation and basically consistent with the testimony of the Company's expert, Dr. Salter, the results of the test showed the following:

The sound generated from Thompson's car at either 80 percent or 100 percent of its maximum volume would clearly have been disruptive if people were trying to have a conversation next to or within 10 feet of his car. (The equivalent of trying to have a conversation at a very noisy club or bar). However, the level of sound became decreasingly loud as one moved further from the source. At 40 feet, the music would have been noticeable but would not have interfered with two people talking to each other at a normal level and standing 1½ to 2 feet, or even a meter apart. At about 90 feet, which is where the burgers and frankfurters were being grilled, the music would have been noticeable but even softer. In my opinion, at that distance the music could not have been disruptive to any group of normal people having a normal conversation.[14]

Further, the evidence showed that the parking lot where the test was conducted was well over 180 feet long and 80 feet wide and if there was a person who happened to be unusually sensitive to loud sounds, he or she would have had plenty of room to move away from Thompson's car while staying within the lot. Indeed, as the lot contained

[13] In a sense, playing these songs at or near the Company's premises is analogous to placing a message on a large picket sign or banner.

[14] Dr. Salter created a chart showing the effect that playing the songs at 100 percent would have on people talking while standing one meter apart and standing at various distances from the sound source. This showed that at a close distance people would have to shout in order to have a conversation. Nevertheless, as the distance became further from the source, the individuals might have to speak very loudly and then at a raised voice and finally in normal voice. This assumed that there were no other vehicles or substantial objects between the sound source and the persons who were having a conversation. This chart is, in my opinion, basically consistent with my observations at the demonstration. See Table 2 of Dr. Salter's Acoustical report.

vehicles at the time that Thompson played his music, that music would be even less audible if two people moved themselves at a distance from the car and placed themselves so that some vehicles separated them from Thompson's car.

Thompson's car, at the time of the demonstration, was placed at the same location that it occupied on the day of the barbeques. As noted above, that location was about 90 feet away from where the grills were set up and more than 180 feet from the houses that abutted the Company's parking lot. Also, his car was at least 50 feet away from the lot's street entrance and at least 70 to 80 feet away from the fence of the school that is located across the street. In my opinion, the sound level from Thompson's car, played at maximum volume, could not have been sufficient to cause any disturbance to either the children playing in the school yard; the homeowners who lived at the end of the parking lot; the few pedestrians or motorists who might have passed by the parking lot's entrance; or to the employees who, unless they decided to stand within 10 to 30 feet of Thompson's car, were hopefully enjoying a couple of franks and beers. Finally, as noted above, Thompson when approached by management and told to lower his music or play another tune, chose to leave and did so within a short time. Thus, any remote disturbance made by his music was short lived and ultimately did not disrupt the barbeques.[15]

By the same token, it is clear to me that when on August 7, Thompson played his music in the parking lot of the Company's headquarters at around 5:15 p.m., the sound level of his music could not have been disruptive to the people who were leaving work in their cars. Indeed, the Company's witnesses testified that they could not hear Thompson's music from inside the building.

So this brings us to the events that occurred on August 6, 2014. And to my mind, this presents a much closer question as to whether Thompson's prounion statements made at a company meeting went beyond the boundaries for protection as set forth in *Atlantic Steel*.

On August 6, 2014, the Company held a series of meetings with the Brooklyn technicians for the purpose of describing its marketing and branding efforts. The main idea was that the Company was now using a brand called "Optimum" and using multi-colored vehicles. The goal, in the Company's view, was to link the customers' good experience when receiving service with the company brand. The purpose of the meeting was *not* to discuss the status of the collective bargaining or to talk about employee wages, hours, or terms and conditions of employment. The main speaker for the Company was Matt Lake, the senior VP of marketing. Among the other officials present for the Company, were Comstock and Monopoli.

At the meeting that was attended by Thompson, Lake in an effort to illustrate the power of branding, made an analogy to two ships. He talked about two vintage sailing ships at sea and then described the likely reaction of the passengers of one when they discovered that the other was flying the skull and bones flag. (The power of a brand). After Lake spoke, Thompson started to comment that there was a third ship out there which was a slave ship. He then went on to describe how the government made money off of chattel slavery and analogized slavery to the way that Cablevision did business.

[15] One wonders whether a continuous loop of these songs would have bolstered prounion sentiment or had the opposite effect.

When Monopoli told him that the purpose of the meeting was to talk about branding, Thompson persisted and kept on comparing Cablevision to a slave holder and intimating that the way Cablevision treated its employees was similar to lynching. When Thompson brought up the issue of parity, Comstock told him that they were not there to talk about issues that were the subject of bargaining. Finally, when Thompson continued to talk, Comstock cut him off by saying; "You made your point loud and clear. Does anyone have some other questions?"

Attached as Appendix A is a transcript of that portion of this meeting that covers the interchange involving Thompson.

A day or two after this meeting, Comstock described Thompson's conduct to Sandy Kapell and Paul Hilber from human resources. From his testimony, the reason he did so was in order to initiate the process of discharging Thompson. That decision was ultimately made and the Union was notified of that decision on or about August 18.

On August 19, Thompson received a phone call from union representatives Tony Spina and Billy Gallagher and was told; "You're going to be fired because of the slavery comment you made in the meeting on the 6th." The discharge was effectuated on August 20, 2014.

General Counsel Exhibit 2 is the notification sent by the Company to the Union on August 18 regarding Thompson's pending discharge. This stated inter alia:

> As a follow up to our discussion today. Attached is a summary that provides the over all picture of Jerome's employment with Cablevision. At this point we are going to be separating his employment as he continues to violate our policies after being warned and told repeatedly as to his need to comply. As you know, Billy, you and I have had on-going conversations regarding Jerome's behavior and that he needs to follow procedures and policies. We in fact have had a number of conversations regarding ways to manage his behavior, to which you offered suggestions which I implemented. You are both well aware that we have provided Jerome with a number of opportunities to become an employee in good standing which he has failed to do.
>
> Jerome has a history of unprofessional disruptive and/or insubordinate behavior in the workplace during work hours. Despite multiple disciplinary steps including a Final Written Warning in March 2014, he has continued to engage in such behavior.

This document then goes on to describe, from the Company's point of view, Thompson's history. In summary form, this sets for the following incidents.

> May 25, 2004. Warning for attendance.
>
> August 12, 2004. Warning for not attending a mandatory meeting.
>
> May 10, 2012**.** Warning and suspension for taking two hours to get to a job that was 3.2 miles away from depot.

January 21 2014. Warning for not reporting an accident in the garage.

March 3, 2014. Final warning re: (a) showing up for work improperly dressed [February 6]; (b) modifying start time in log without permission [February 20]; (c) speaking to supervisor in unprofessional manner [February 6 and 21]; (d) refusing to accept a headset and throwing it on the supervisor's desk [February 21]; and (e) an avoidable accident on February 21.

In May 2014, the excessive use of the company issued cell phone.

July 31, 2014. Excessively loud playing of his car stereo at BBQs held at three sites in Brooklyn. He ignored first request by Barry Monopoly to turn off music and when Monopoly asked him to turn down music, he left but parked off site but still close to BBQ while keeping the music on.

August 6, 2014. During a meeting, Thompson interrupted the presentation and among other things, compared employees to slaves on a slave ship. He also refused to stop talking about contract demands after Barry Comstock told him that these matters should be discussed at the bargaining table and not at the meeting.

August 7. Playing his music at Bethpage headquarters with his car stereo.

As previously stated, I think that the event that triggered the decision to discharge Thompson was his remarks made at the August 6 meeting. I believe that this is what precipitated the process that led to his discharge and that but for this transaction, I do not believe that Thompson would have been fired. Insofar as the incidents on July 31 and August 7 when he played his union songs, I think that this was thrown into the mix in order to buttress the Company's anticipated case. But if it was in fact relied on as a basis for his discharge, I think that the Company's reasoning was misguided. In that regard, it is my opinion that playing these songs constituted union activity and I have concluded that Thompson's music was not so loud as to be disruptive of the activities of other persons.

Turning to the events of August 6, 2014. Because Thompson's comments at the August 6 meeting were supportive of the Union and critical of the Company's policies regarding wages, they constituted union and collective activity that is normally protected by Section 7 of the Act. The question is whether Thompson went too far.

In *Stanford Hotel*, 344 NLFB 344, 358 (2005), the Board stated; "When an employee is discharged for conduct that is part of the res gestae of protected concerted activity, the pertinent question is whether the conduct is sufficiently egregious to remove it from the protection of the Act." It is well established that an employee's right to engage in Section 7 activity "may permit some leeway for impulsive behavior, which must be balanced against the employer's right to maintain order and respect." *Kiewit Power Constructors Co. v. NLRB*, 652 F. 3d 22 at page 26. In *Atlantic Steel*, supra, the Board listed these factors to be considered. (1) the place of the discussion; (2) the subject matter of the discussion; (3) the nature of the employee's conduct; and (4) whether the conduct was provoked by the employer's unfair labor practices.

In this case, Thompson's conduct was not provoked by any employer unfair labor practice. It took place in a work area where other employees were present and in the context of a business meeting whose purpose was to discuss branding and not to discuss terms of employment or the status of bargaining. As to content, Thompson's comments did not contain any profanities or threats; albeit they clearly were provocative. His statements comparing the Company's employment practices to slavery and lynching were made in front of a predominately African American audience.

There are a number of Board cases generally dealing with this type of situation, but I have found none that are directly on point. For example in *Beverly Health & Rehabilitation Services*, 346 NLRB 1319, 1322 (2006), the Board concluded that an employee did not lose the Act's protection when in connection with the processing of a grievance, he told another employee to "mind her fucking business." In *Fresnius USA Mfg*., 358 NLRB 1261, 1264-1268 (2012), the Board held that comments made in a newsletter that were vulgar and demeaning to women did not lose the protection of the Act when they were part of the employee's concerted activity. In *Kiewit Power, Corp*., 355 NLRB 356 fn1 (2000), the Board held that the conduct was still protected even though the employee told a supervisor that the situation could get ugly and that he "better bring his boxing gloves." [16]

On the other hand, there are cases in which it has been found that misconduct accompanying union or concerted activity will lose the protection of the Act. In *Starbucks Corp*., 354 NLRB 876, 877-878 and fn. 8 (2009), an employee lost the Act's protection when, at a public rally, he threatened a company manager in view of other employees. In *Daimer Chrysler Corp*., 344 NLRB 1324, 1328-1329 (2005), the Board held that an employee lost the Act's protection when he made a profane outburst to a supervisor in an open cubicle that was overheard by other employees. In *Trus Joist Macmilan*, 341 NLRB 369, 370-371 (2004), the Board held that an employee's conduct, in a private office was unprotected because the employee had requested the attendance of other managers to further a prearranged plan to embarrass a supervisor.

The Respondent cites *Avondale Industries*, 333 NLRB 622, 637 (2001); *Carrier Corp*., 331 NLRB 126 fn. 1 (2000); and *Eagle-Picher Industries*, 331 NLRB 169 (2000), in support of its position that Thompson's conduct, even if concerted, was unprotected.

In *Avondale*, a decision adopted by the Board, the Administrative Law Judge concluded that the discharge of a union activist employee did not violate the Act. In part, he concluded that this employee had called her supervisor a member of the Klan thereby raising an issue "of racial prejudice that could potentially embroil other African American employees in her ongoing personnel dispute." That case, however, is inapposite inasmuch as the racial comments made by the employee were not made in the context of any union or concerted activity on her part. Rather, they were made in the context of her personal dispute with this particular supervisor.

[16] See also *Battle's Transportation Inc*., 362 NLRB No. 17 (2015) (employee told supervisor to "shut up," and got partly out of his chair, slammed his hand on the table and called the supervisor stupid and a liar); *Fairfax Hosp. v. NLRB*, 14 F.3d 594, (4th Cir. 1993) (employee allegedly warned supervisor to expect retaliation).

In *Carrier*, the complaint was dismissed because the disciplined employee interrupted a meeting conducted by his manager with other employees present, insisted on immediately discussing a subject that was unrelated to the meeting and refused to acquiesce in the manager's repeated directions that his concerns could be discussed later in the day at a more appropriate time.

In *Eagle-Picher Industries*, the employer, at a meeting to dissuade employees from voting for a union, told the employees that he was going to make a speech and that they should hold their questions until after he was finished. The employee in question interrupted the speech and when told to sit down and be quiet, he muttered "garbage" loud enough for all to hear. The Board concluded that the employee's garbage comment was insubordinate and unprotected.

The Union cited *Winston-Salem Journal*, 341 NLRB 124, 126 (2004), in support of its position that Thompson's conduct remained protected notwithstanding his comments about slave ships et al. In that case, the employee, at a crew meeting, raised employee concerns about favoritism in response to the supervisor's criticism of the crew's job performance. He also accused the supervisor of being a racist. The employee was the union vice president and was speaking up in his role as the employees' representative. A Board majority, analyzing the facts under *Atlantic Steel*, concluded that the employee's conduct was concerted and did not lose the protection of the Act. It noted that the first factor weighed in favor of the employee because the meeting was meant to deal with employee performance and therefore his remarks about favoritism was an appropriate part of the discussion. The Board concluded that as there had been previous discussions about favoritism between the union and the company, the employee's statements at the meeting were a continuation of previous discussion. As to the racist comments, the Board noted that although the employee interrupted the supervisor and called him a racist, this was "not so inflammatory as to lose the protection of the Act."

In my opinion, the instant case, falls somewhere between the facts of the cases cited above. I therefore think that the outcome is decidedly uncertain and ultimately could go either way.

On balance, it is my opinion that Thompson's conduct at the April 6 meeting was unprotected. This was a business meeting whose purpose was to discuss "branding" and not to discuss wages, employment conditions or the state of the collective bargaining. What Thompson did was, in effect, to try to capture a business meeting and convert it into a forum for the presentation of his views about the Company's wage and employment practices. Additionally, he likened the Company and its employment practices to slavery and to lynching and did so in front of an audience of coworkers, many of whom were African Americans. Finally, he persisted in raising these points after being told that this was not the time nor place to raise these issues.

Context can be controlling. I have little doubt that Thompson's statements, if made in a pamphlet, or on Facebook, or even shouted out loud using a bullhorn at a rally outside the Company's premises, would have been protected prounion speech. [17] I

[17] For example see *Pier Sixty, LLC*, 362 NLRB No. 59 (2015), where a Board majority, while not condoning the use of obscene and vulgar language toward a manager in a Facebook post, concluded that the Respondent had tolerated similar profanity in the workplace and found that the conduct was not

would therefore conclude that a discharge based on these same statements made in those circumstances would be a violation of the Act. But in the circumstances of this case, I think that the balance falls on the other side of the line and in favor of the Company's position. I therefore shall recommend that the discharge allegation of the complaint be dismissed. [18]

The final issue regarding Thompson relates to the fact that he drove to the Company's Bethpage headquarters on July 7 and while in the parking lot, loudly played his music. This occurred at around 5:15 p.m. when other employees were leaving work and driving their cars from the parking lot. The evidence showed that the music could not be heard from inside the building and to the extent that any employees heard the songs, this was transitory as they were exiting the premises. Also, the evidence does not establish that Thompson, as he was leaving the facility, blocked the exit and prevented vehicles from leaving. The bottom line is that Thompson was approached by company security persons who asked him to leave. And when he stated that he had a right to be there, he was told that the police would be called and he would be arrested.

In this situation, Thompson was an off-duty employee who entered the Company's parking and lot and played his union songs.

In *Roger D. Hughes Drywall*, 344 NLRB 413, 415 (2005), the Board concluded that a Respondent violated Section 8(a)(1) by among other things, threatening to call the police and cause the arrest of a picketer. The Board held that because the Union was engaged in lawful area standards picketing on public property, the Respondent interfered with employees' Section 7 rights by threatening to cause an arrest.

In *Fred Meyer Stores, Inc.,* 362 NLRB No. 82 the Board concluded that the employer violated Section 8(a)(1) when, despite an access provision in the contract, prohibited union representatives and employees from talking on the store floor, called police and caused the arrest of three representatives.

In *ITT Industries Inc. v. NLRB,* 413 F3d 64 (D.C. Cir. 2005), the employer violated the Act when it refused to permit off-site employees from entering its parking lot to distribute prounion handbills. The Court concluded that the interests of employees outweighed the security or property rights concerns of the employer. Accordingly, the court agreed with the Board's finding that while off-site employees may not have the same protections as employees within a facility, they still have interest that an employer must recognize. See also *International Business Machines Corp.*, 333 NLRB 215 (2001), where the Board held that the employer violated the Act by maintaining a rule prohibiting off duty employees from placing large prounion signs in its parking lot.

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so egregious as to lose protection of Act. Member Johnson, on the other hand, opined that the Facebook comments were qualitatively different from other obscenity tolerated by the Respondent and reflected a level of degree of animus and aggression that went beyond-the-pale.

[18] The General Counsel cites a situation where another employee named Tiffany Oliver was not discharged for making inappropriate racial statements about other employees. But although this employee was not discharged, she did receive a final warning. Also, her statements were not made at a meeting where company officials were trying to conduct company business.

I therefore conclude that Thompson, as an off duty employee, had a right to play his prounion songs at the parking lot of the Company's headquarters. Accordingly, I conclude that the Respondent violated Section 8(a)(1) by threatening to cause his arrest.

(f) Dolan's Speech on September 9, 2014

The amended complaint alleges that on September 9, 2014, the Respondent by James Dolan **(a)** threatened employees with continued loss of a pay increase if they voted in an Employer's sponsored poll to keep the Union as their bargaining representative; **(b)** threatened to withhold new technology and training if they voted for the Union; **(c)** impliedly threatened employees with job loss if they supported the Union; **(d)** promised to increase wages if employees voted against the Union; and **(e)** promised to pay the Union if it disclaimed an interest in representing the employees.

By way of background, in June 2014, the Union sent a petition signed by a majority of the employees in the bargaining unit. This stated:

> We, the undersigned do not understand why Cablevision has not yet agreed to parity in wages for the Brooklyn workers. We are sticking together with CWA to demand justice.

At this time, the Company and the Union had been in negotiations for a considerable time and the Company's position was that wages were a subject of bargaining and that it was not required, while negotiations were ongoing, to extend wages and benefits increases to the certified unit employees that had been given to non-unit employees.

On September 9, 2014, Dolan visited the Brooklyn employees and gave a speech. Previously, a second decertification petition had been filed but its processing had been blocked because of the various unfair labor practices that had been filed and remained unresolved.

While, the General Counsel places significance on the fact that Dolan hadn't spoken to these employees for many years, this is completely irrelevant. It is what he said or didn't say that is at issue. And luckily enough, there can be no dispute because the speech and the questions and answers were recorded and a transcript was placed into evidence. Relevant portions of that transcript are attached hereto as Appendix B.

During the speech portion of this event, Dolan basically told the employees that he could not say much about their relationship to the Company because they had selected a union to represent them and he was constrained by law as to what he could talk about. He told them that there had been a decertification petition that was blocked by the NLRB and that recently some employees had signed the petition described above. Dolan stated that he wanted to find out what the true feelings of the employees were regarding union representation and to that end he had arranged for a poll to be conducted on the following day by an independent third party. He stated that In the event that the employees voted for the Union, the Company would make every effort to reach a contract but that this would not alter the positions that the Company had taken during negotiations. He said that if the employees voted against the Union, he would try to either convince the Union to hold the official decertification election or would seek to induce it, perhaps by offering to pay for all of its expenses, to withdraw.

After his initial remarks, Dolan solicited questions from the audience and received a good number of them. Some were made by prounion employees and some seem to have been made by antiunion employees. Some were short questions and some were rather long statements posing as questions.

From reviewing the transcript, the most frequently asked question concerned the subject of "parity." In this respect, the Company had given wage increases to its nonunion technicians at other locations and did not extend them to the Brooklyn employees after the union was certified and bargaining commenced. In several answers Dolan said that since the parties were in the middle of negotiations and the Union was asking for a variety of benefits that were not available to other employees, this had to be weighed in the scale when negotiating about wages. For example, at one point he made the following rather lengthy explanation:

> I mean as far as parity goes … look I am trying to think of a good analogy for you… If your union was coming in and asking for the same environment, right and the same work rules… that everybody else lived under… then you would have probably, … close or equal wage. But that is not what's going on here… They are asking for a lot more of those things and they say, oh and by the way, we also would like to get paid the same…. Well, the things that they are asking for cost money and they are essentially asking for a better deal than what everybody else at the company has. And then that's our position and … you can argue with it, but the fact is, that you are not asking for the same thing. You can sit there and say, well, the things that we are asking for don't mean anything. Well if they don't mean anything then don't ask for them. They do mean something and they do cost money. And they do change the expense to the company that … change the entire relationship… And by the way they are the kinds of things that make it even harder for the company to operate. You know, things like scope of work… What you can and can't work on… Those kinds of things… That doesn't exist anywhere else. You know employees at other parts of the company… regularly change what they are dong. They can't do that here. It's just what they are asking for is more expensive than what it takes in other places and that has to come from somewhere. And if you want parity, you have to take everything into account. You can't just say, I want parity here and parity here, but I want to be better here and better there, but those don't count…

According to the General Counsel, Dolan "plainly conveyed to Brooklyn union employees that it would withhold pay increases, new technology and training from employees if they continued to support the Union." The General Counsel claims that by taking this position, the "Respondent continued to adhere to a firmly-held bargaining position that it would not agree to any collective-bargaining agreement that provided Brooklyn union employees with a "better" compensation and benefits package than that received by Respondent's non-union employees."

The evidence simply does not support this allegation. Dolan's comments were to the effect that wages, or the introduction of new technology and training, were subjects that he had to talk to the Union about and that if he unilaterally made changes, he expected that the Union would file new unfair labor practice charges. And as to his remarks about the Company's negotiation posture, there is simply nothing illegal about a

company driving a hard bargain and telling employees that this is the Company's position. In my opinion, Dolan's remarks did not link either the possible granting or loss of benefits to the outcome of the poll or to whether employees supported or rejected the Union.[19]

The General Counsel also claims that during a question and answer about job security, Dolan threatened employees with a loss of employment if they supported the Union. In my opinion, Dolan's remarks on this score cannot be interpreted as meaning that employees could or might lose their jobs if they voted for the Union. Some of his remarks were as follows:

> **Dolan**: And as you said, it's about job security… and not necessarily about the money first. Well, what your union is asking for is more job security than everybody else has. So fine. But then there has got to be a give-back on the other side…. You can't just say… I want a better deal than the other folks who work in the other places here at Cablevision. That's not fair. It's not – and I don't agree with you, by the way, … that the other places aren't – I mean, they work hard too… They work the same kinds of shifts, the same kinds of things that you do… You don't help yourself by thinking… I am different than everybody else… and I deserve more.
>
> **Q**. I never said I wanted more.
>
> **Dolan**: Well except that you do want more. I mean, it's a disguised way of asking for more, but you sit there and you say, I want all the good things… that the other employees have, plus I want these other things that they don't have… And that's asking for more… If you are at the bargaining table… and you sit there and you say the most important thing to us is job security… I want more job security than anybody else; you could have more job security than anybody else but the expense of that .. you bear so that you are equal with the other employees. You can't… sit there and say, I want more than them in this, this, this and this,… and then when it comes to this…I want to be the same….
>
> **Dolan**: Let me just address because we talked a lot about job security… And I am going to try and do this in a way that the guy in the suit over here doesn't jump and tell me … that I am going to court… So let me try from a generic

[19] It should be noted that there is no allegation in this case that the Respondent has engaged in surface bargaining. (Indeed an agreement was reached). Nor is there any allegation that the Respondent violated the Act by failing to extend wage increases or new technologies to the Brooklyn employees. In *Apogee Retail*, 363 NLRB No. 122 (2015), the Judge, with Board approval, stated that except for situations where wage increases (or other increased benefits), had been planned before the advent of a union, or where wage increases have historically been granted on a regular and periodic basis, an employer need not give increases during contract negotiations and may defer them to any collective-bargaining agreement subsequently made. Accordingly, any statements to employees to the effect that wages are frozen pending the outcome of negotiations is simply a statement of what is permissible under the Act and therefore cannot violate Sec. 8(a)(1) of the Act. In this regard, absent threats of reprisal or promises of benefits, statements apprising employees of a company's bargaining position are not violative of the Act. *United Technologies Corp*., 274 NLRB 1069, 1074 (1985), enfd. as *NLRB v. Pratt & Whitney*, 789 F.2 1129 (2d Cir. 1986); *Proctor & Gamble Mfg*., 160 NLRB 334, 340 (1966).

point of view, okay, rather than talk specifically about you. In general… job security… it's not a function of a guarantee of… being employed as much as its … of an assurance that you are needed as an employee… Because no matter what anybody gives you as a guarantee … it might extend your employment beyond the time that you are needed, right, but if you are not needed, you don't have job security no matter what any contract or anybody says to you because contracts come to an end, and … time moves on, and if you are not needed.. then you don't have job security. So how do you make sure… you stay … in a position where you can feed your families… where you can earn a decent pay…? The best way that you can do that… is to stay needed. And in this case – here is where I will get in trouble … let's see, I have to think about it for a second.

In a case where you are in an industry … that's evolving… the best way to have job security is to stay on top of what the newest developments are… and being about to help the company and push it forward and be successful… So that means that … you can't just sit and say, well, I know how to put this connector together with this and do this with that and that's not enough because it's not enough. It's not enough to give you job security no matter what any contract says. It's not enough. You have to evolve. And I will tell you that from a philosophical point of view – and I am going to be in trouble, but… at Cablevision what we want to do with all of employees, … is to train them and keep them ahead. The real job security will be here as if for some reason the company… disappears… that you are the best trained technicians in the Northeast… That you are completely up to speed … with how new IP systems work… and how these companies operate, how we dispatch etcetera; that you have the newest tools and you can walk into any other company that's doing this kind of work and we are not the only company. There [are] tons of companies… and you can say, I am fluent … in XYZ programing. I know how to operate like this. I know how to handle a computer in a home. I know how to do this, that and the other thing. That makes you valuable… I would hope that you would earn more money and that's the way that you truly have job security because like I said, contracts come to an end… They could say if you are not needed … when the contract comes to an end, then you are not needed and it's your job, personally your responsibility … to stay needed. That's the way our economy works. And if you do that you will be very successful. And you will be very good at your job and you will have the esteem of your colleagues and … companies will want you. And if you don't do that… you are not going to be needed. And that's the way we want to operate the company. That's the way it works.

During one point in the meeting, Dolan responded to a question and included in his answer a comment that if an employee didn't trust anything that the company did, why did he continue to work for Cablevision; he could go to Verizon which had a unionized work force. This could arguably be construed as an implied threat of discharge. *Jupiter Medical Center Pavilion*, 346 NLRB 650, 651 (2006); *Paper Mart*, 319 NLRB 9 (1995). However, in the context of this meeting, taken as a whole, I do not conclude that this singular remark could reasonably be construed as an implied threat of discharge. It is clear that the entire tenor of this meeting was to talk about the upcoming poll and that Dolan was careful to explain that he could not talk about issues that were being discussed in negotiations. Much of the meeting was taken up with questions and

answers about parity and Dolan also explicitly told the employees that there would be no reprisals.

The complaint also alleges that Dolan promised to pay the Union for its costs if it disclaimed an interest in representing the employees. This clearly was one of the things that Dolan did say. The question is whether this violates Section 8(a)(1) of the Act.

If Dolan actually followed through on this idea (and there is no indication that he did), he might very well have violated Section 302 of the Act. That provision prohibits payments by employers to unions or union representatives, except in specified circumstances such as payments to contractually established and jointly administered pension and health care funds. A payment made to a union to disclaim its interest in representing a company's employees would not fall within any exception of Section 302, and might indeed, be looked at with askance by the U.S. Attorney's office.

None of the Briefs dealt with this question and no-one cited any cases either to support or reject the notion that this kind of statement constitutes interference with employee Section 7 rights. As this was one statement made during the course of a rather long meeting, most of which consisted of remarks that are protected by Section 8(c) of the Act, I shall recommend that this allegation be dismissed.

(g) The Poll on September 10, 2014

The amended complaint alleges that on September 10, 2014, the Respondent, by the Honest Ballot Association, engaged in surveillance and created the impression of surveillance by **(a)** requiring employees to present identification to vote; **(b)** assigning employees a unique personal identification number in order to vote; and **(c)** watching employees as they voted.

According to Hilber, during the summer of 2014, he heard from about a dozen or so employees about their frustration with the Union. He testified that he heard from some employees and from Monopoly that people were gathering signatures for a new decertification petition.

On August 26, 2014, and while contract negotiations were still underway, Cablevision entered into an agreement with the Honest Ballot Association to conduct a poll to be held on September 10 at the three Brooklyn locations; 9502 Avenue D, 1095 East 45th Street, and 827 East 92nd Street. The Honest Ballot Association will be referred to herein as the HBA.

This poll was announced by Dolan at the September 9 meeting. Employees were told, among other things, that in the event that the Union lost, the Company would not withdraw recognition and would continue to bargain. Dolan did state, however, that if the Union lost, he would try to convince the Union to walk away. In a memorandum dated September 9, the Respondent notified the Union as follows:

> The company intends to hold a non-binding poll for the Brooklyn unit employees on Wednesday, September 10 with the following single question: Do you want to be represented by CWA Local 1109.

> The poll will be conducted by … the Honest Ballot Association and will track as closely as possible the times and locations of the voting for the original NLRB election in January 2012. As with the 2012 election, the polling will be entirely voluntary and completely confidential. Neither the Company nor the Union will learn who participated, let alone how any employee answered the question. Finally, there will be no reprisals or retaliation of any kind against employees with respect to participation in the poll or any protected activities in which an employee chooses to engage prior to the poll.
>
> Unlike the 2012 election, however, the poll… will be completely non-binding. Cablevision will not withdraw recognition from the CWA if a majority of the ballots cast are against union representation; on the contrary, it will continue to meet it duty to negotiate a collective bargaining agreement in good faith…
>
> Lastly, we have researched the issues exhaustively and believe this poll is fully lawful under the First Amendment given all the facts and circumstances – including the recent fact that, as we've been told, that 112 of our employees have so far signed a petition opposing the Union despite a union agent's attempts at intimidation. Accordingly, we hope the Union would not object to this non-binding poll and indeed embrace the idea of giving the Brooklyn unit employees their first opportunity in almost three years to express – private, voluntarily and without fear of reprisal – whether or not they support the Union.

Prior to September 9, the Union was given no notice of the Company's intention to hold this poll.

The poll was set up with a single Brooklyn wide eligibility list covering all three locations. This meant that a Cablevision employee who normally worked at one location could vote at another location. Instead of using paper ballots, the HBA decided to use computers with touch screens. At each of the balloting locations, a room was set aside where employees were let in, one at a time, and were greeted by an HBA representative who sat at a table with a list of the eligible voters. That individual asked the Cablevision employee for identification and after showing a badge or other identification, the HBA person circled the employee's name on the list (or in some cases the employee may have signed next to his name). The Cablevision employee was then given a slip of paper with a previously determined pin number on it and instructed to go over to where a computer was set up at the other end of the table. In this regard, a cardboard screen was placed between the person who was voting at the computer and the HBA person who was registering the voters. This was obviously done to prevent the HBA representative to see how the employee was voting. When the voter entered his or her pin number in dialogue box, a screen opened which asked; "Do you want to be represented by CWA?" After making a yes or no selection, the voter was given the option to go back and change his choice. Upon completion of the voting process, the computer screen said; "Thank you," whereupon it was returned to the original welcome screen. The HBA representatives were instructed to make sure that after a person indicated that he voted, either by verbal expression or by standing up, that the computer registered the thank you screen. In some few cases, this could have happened prematurely as some employees testified that the HBA person looked over or around the screen sheltering computer before he or she completed the vote. But the evidence was that in almost all cases, the voters completed their voting without the HBA person looking at the computer screens.

As to the requirement that employees show some form of identification, this seem reasonable inasmuch as there were no company or union designated observers, who in a Board conducted election, typically know the identity of the voters.[20]

Based on the credited testimony of the HBA representatives, I am confident that this organization ran this poll in a manner so that neither it nor the Company knew how the people voted. However, the problem with using this electronic balloting system (instead of paper), is that by giving each employee a pin number to be entered into a computer before voting, employees might, even if mistaken, assume that their votes could be traced to their pin number and therefore be disclosable to the Respondent. In this regard, no instructions were issued to the employees about pin numbers and they were not assured that each pin number would be destroyed upon its use. And even if employees were so advised, they would have to take someone's word for it.

For what it's worth, the HBA certified that there were 115 yes votes and 129 no votes. Notwithstanding the poll, the Company and the Union continued to bargain and ultimately a contract was reached and executed in February 2015.

Polling was initially viewed by the Board as a form of unlawful interrogation and viewed as going beyond the mere expression of views or opinions that are protected by Section 8(c) of the Act or the First Amendment. Nevertheless, faced with criticism by some Appellate Courts, the Board modified its view in *Blue Flash Express Co.*, 109 NLRB 591 (1954), and held that interrogation would only be unlawful when it was shown to be coercive in the light of "surrounding circumstances."

Subsequently, In *Struksnes Construction Co*., 165 NLRB 1062 (1967), the Board revised the criteria previously described in *Blue Flash*, as follows:

> Absent unusual circumstances, the polling of employees by an employer will be violative of Section 8(a)(1) of the Act unless the following safeguards are observed: (1) the purpose of the poll is to determine the truth of a union's claim of majority, (2) this purpose is communicated to the employees, (3) assurances against reprisal are given, (4) the employees are polled by secret ballot, and (5) the employer has not engaged in unfair labor practices or otherwise created a coercive atmosphere.

In *Struksnes*,[21] the Board held when a "poll" was taken by the employer while a petition for a Board election was pending, this did not serve any legitimate employer interest that would not have been better served by the forthcoming Board election.

In *Texas Petrochemicals Corp*., 296 NLRB 1057, 1063 (1989), and *Grenada Stamping & Assembly, Inc*., 351 NLRB 1152, (2007), the Board held that where there is an incumbent union, advance notice of the poll is a required element.

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[20] There was no evidence that company supervisors or managers entered into the rooms in which the voting took place. They were, in fact, expressly told to stay away. On a couple of occasions, a supervisor may have been in a hallway leading to the voting room. But to me, this is irrelevant and cannot be the basis of a surveillance allegation.

[21] The Board's Struksnes standards were ultimately endorsed by the Supreme Court in *Allentown Mack Sales & Services Inc., v. NLRB*, 523 U.S. 359.

The Respondent argues that its poll, even if it did not meet all of the criteria set forth in *Struksnes*, did not violate the Act for the following reasons:

> In sum, the Company's poll was not and could not be considered coercive in any manner. Unlike the situation where an employer is itself polling employees with the intent to withdraw recognition based on the result, a coercive or unlawful motive to undermine the Union could hardly be inferred here, where the Company has expressly and unequivocally informed employees and the Union that it would not withdraw recognition from the Union and would continue to bargain in good faith with the Union regardless of the result of the poll. Absent the potential for coercion, much less actual coercion, the rationale underlying the Board's standard regarding polling set forth in Struksnes is plainly inapplicable. Moreover, it is abundantly clear that the polling was not so coercive that it constitutes and unfair labor practice and it is, therefore entitled to constitutional and Section 8(c) protection. See generally *Alan Ritchey*, 346 NLRB 241 (2006).

I do not agree with the Respondent's argument. For one thing, the poll that was taken in this case, clearly did not meet several of the criteria that are set out in Struksnes. To be sure, the balloting was secret, assurances were given against reprisals, and no contemporaneous unfair labor practices had been committed. But the poll was not taken to test a claim of the Union's continuing majority status. [22] Also, the Union was not given sufficient prior notice of the poll.

I take the Respondent's assertion it was not seeking to withdraw recognition at face value. The employees were told on September 9, that if the Union lost, the Company would continue to bargain; albeit Dolan would try to convince the Union to walk away or agree to a Board conducted decertification election. The fact is that soon after the poll was conducted, the Company and the Union resumed their negotiations and ultimately reached a contract.

However, I do not believe that the Respondent had a sufficiently legitimate purpose in conducting this poll. The Respondent could reasonably assume that its employees (or at least a substantial number of them), would vote. (Indeed, most did vote). And given this assumption, this entire process would permit the employer to discover, *while negotiations were ongoing*, how strong or weak the Union was in pursuing its contract demands. In my opinion, this unfairly put the Respondent in a uniquely favorable position at the bargaining table because by conducting the poll, the Company would be able to judge the extent to which the Union enjoyed or lacked the support of the employees. This would be like playing poker with a mirror disclosing the hands of one's opponents.

In my opinion, the Respondent's reliance on *Alan Richey* does not support its position. In that case, the employer conducted a poll in order to discover which of two people it should negotiate with in an intra-union dispute. The Board noted that there were no contemporaneous unfair labor practices and that the employer's purpose in conducting the poll was to get negotiations under way; not to impede them. The Board

[22] In response to the union petition sent to him, Dolan correctly noted that this petition did not actually claim that the signatories wanted to be represented by the Union.

concluded that in those particular (and unusual circumstances), there was a legitimate reason for having the poll and that its purpose was not to interfere with or undermine the Union.

Based on the above, I conclude that the Respondent's poll on September 10, 2014, violated Section 8(a)(1) of the Act. And having concluded that the poll itself was violative of the Act, I also conclude that it is not necessary for me to determine whether the mechanics of how the poll was conducted also violated the Act.

(h) The City Council Meeting

The complaint's allegations concerning this event are that the Respondent gave material support to anti-union employees by providing T-shirts to employees and paid time off to attend a City Council meeting held in December 2014. In the Brief, the General Counsel asserts that the Respondent by handing out these T-shirts and allowing employees to attend the meeting gave more than ministerial aid and "instigated and promoted a decertification movement." I don't agree.

As noted above, a second decertification petition had been filed with the Board on October 16, 2014. (I shall assume that at least 30 percent of the bargaining unit employees signed something in support of this petition). However, the petition was dismissed by the Regional Director, presumably based on the Board's "blocking charge rule." That is, the Board generally will not conduct an election when there are unresolved unfair labor practices. At this point in time, the Union and the Company were still engaged in bargaining but had not yet reached an agreement. The evidence shows that each party was using a variety of publicity actions in order to persuade the other to accede to its demands.

The Company operates in New York City pursuant to a license. On November 14, 2014, the New York City Council on Zoning and Franchises notified the public that it would hold a hearing relating to the Cablevision Franchise Agreement. The stated purpose of this hearing was to consider whether the Company was in breach of its franchise agreement due to alleged bad-faith bargaining.

Whether or not the City Council had any power or authority to determine if the Company was bargaining in bad faith, both the Union and the Company urged employees to attend this hearing that was held on December 2, 2014.

After the notice of hearing, the Company became aware that some of its employees wanted to attend the City Council meeting and wanted to speak in favor of the Company. Soon thereafter, the Company purchased a bunch of T-shirts that were printed with the slogans; "Let Brooklyn vote" or "let us vote." A cursory Google search for T-shirt prices shows that similarly printed and colored T-shirts would cost anywhere between $3 and $5.

On November 30, 2014, the Company notified employees by email that there was going to be a City Council hearing and that it was going to focus on the Company's dealings with the CWA. The email further informed employees that they were free to attend the hearing and that the Company had purchased some T-shirts which employees could pick up at the human resources office.

On November 26, company representative Hilbert told the Union that any employee who wanted to attend the City Council meeting would be given paid time off to do so. Some employees went to the HR office to get the "let us vote" T-shirts which were placed in an open box. When employees indicated that they wanted a T-shirt, they were asked to sign for them.

On December 1, 2013, the Company emailed the following message to its employees:

> Since so many Brooklyn Operations employees have said that they would like to attend the hearing, we have decided that any Brooklyn Operations employer who does not wish to work tomorrow will not lose pay.
>
> The choice of whether or not you attend the hearing, or whether or not you work tomorrow is entirely your own decision. There will be absolutely no reprisals whether or not you attend the hearing or whether or not you work. We only ask that if you are not coming to work tomorrow you let us know prior to the start of your shift.

The hearing was held on December 2, 2014. Some employees wore the T-shirts made available by Company. Others wore prounion T-shirts. Others wore shirts with no messages. About 100 employees attended this meeting and some were given the opportunity to speak.

There was no evidence that the Company instigated the filing of the October 2014 decertification petition. Nor is there is any evidence to show that the Company, by its agents, solicited any employee signatures for the petition. Indeed there was no evidence to show that any company agent ever encouraged any employee to support the decertification petition or to vote against the Union in the event that the Board conducted an election.

In my opinion, the General Counsel rests its claim on a very slim reed. I simply do not think that the handing out a bunch T-shirts with slogans, "let Brooklyn vote" and "let us vote," can be viewed as evidence that the Company instigated and promoted a decertification movement. For one thing, the T-shirts were neutral on their face and merely indicated that the wearer was desirous of having a vote. It is certainly plausible that employees who were unsure of their position vis-a-vis the Union, might have been in favor of having an election without being ill disposed toward the Union.

With regard to the release of employees to attend the City Council hearing, the Company permitted *any* employee to attend the hearing without any loss of pay. So in this respect, this was neither favorable nor unfavorable to one side or the other.

Finally, these transactions are, to my mind, so trivial, that I cannot conclude that they warrant a finding that the Company violated the Act. By the same token, I do not think that the mere fact that a company representative asked employees to sign for the t-shirts can reasonably be construed as constituting coercive interrogation. Nor do I conclude that the Respondent coercively interrogated employees about their union sympathies, when on December 1, 2014, Angela King asked one employee, McDaniel Paul, why he needed the T-shirt since he favored the Union.

Conclusions of Law

By threatening to call the police and have an employee arrested because he was in a company parking lot and engaging in union activity, the Respondent violated Section 8(a)(1) of the Act.

By conducting a poll as to whether employees wished to be represented by the Union, the Respondent violated Section 8(a)(1) of the Act.

In all other respects, I conclude that the allegations of the amended complaint lack merit and should be dismissed.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[23]

ORDER

The Respondent, CSC Holdings LLC and Cablevision Systems of New York City Corp., its officers, agents, and representatives, shall

1. Cease and desist from

(a) Threatening employees with arrest when they are engaged in union activity in company owned parking lots.

(b) Conducting polls, absent any legitimate purpose, as to whether employees wish to be represented by the Communications Workers of America, AFL—CIO.

(c) In any like or related manner, interfering with, restraining, or coercing employees in the rights guaranteed to them by Section 7 of the Act.

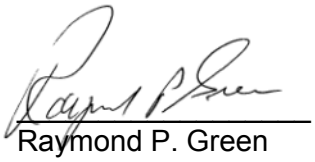
2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days after service by the Region, post at its Brooklyn, New York facilities, copies of the attached notice marked "Appendix C." Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Employer's authorized representative, shall be posted by the Employer and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Employer customarily communicates with its employees by such means. Reasonable steps

[23] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

shall be taken by the Employer to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Employer has gone out of business or closed the facilities involved in these proceedings, the Employer shall duplicate and mail, at their own expense, a copy of the notice to all current employees and former employees employed by the Employer at any time since August 7, 2014.

Dated, Washington, D.C. April 19, 2016



Raymond P. Green
Administrative Law Judge

Appendix A

Excerpts from the meeting on August 6, 2015.

After the initial presentation by management about the importance of branding, employees asked if there they had any questions. The following ensued.

Jerome Thompson: Yeah. It's very interesting that you started off your presentation with the pirate ship and the people coming across to the new world. Coincidentally, there was a third ship out there; there was a slave ship. That's one of the biggest things on the US government's so-called brand as a home of the free and the brave and stuff like that where they made millions and billions of dollars off of chattel slavery, off the backs of workers that didn't' get paid for it. This is a fight that we're fighting in Brooklyn. We got the beautiful trucks. They look great. The new logo looks great, but there's a big stain on there because Cablevision doesn't want to give us parity with the other Cablevision employee; the other 17,000 Cablevision employees out there. So what are you guys planning on doing with that as far as the brand is concerned? How do you plan to fix that, that little stain, that big stain, actually, what customers are looking at? You got employees out here not making enough money to survive in New York City.

Barry Monopoly: I don't know if you mind me jumping in real quick. The bottom line, that's up to negotiations. No one in this room could speak to that. The other part that sometimes people tend to forge is that you guys made a conscious decision to [select] the third party to represent you and speak for you for probably good reason. But that being said, you have to really pose that question to them, because they're the ones who now speak for you and represent you at the bargaining table. No one in this room here right now are in a position to speak to that ….

Thompson. I was talking about what he was talking about, the branding. I mean I understand what you're talking about. What you're saying is partially correct. What I'm talking about is I'm on board with the new branding with the Cablevision and looking good. I'm just concerned because I work for Cablevision and we all work for Cablevision. Why do we have – you guys have put a lot of money into making everything look good, but just like the slave ship, that's something America just sweeps underneath the rug. The thousands of black men and women that were hung on trees, you know what I'm saying, just for financial purposes. You understand. We don't want that stain on cablevision. I know you guys are dealing with people in corporate. I need you to send this message back to corporate. We want parity so we can erase that stain that's on these beautiful tricks.

Barry Monopoly: That goes back to what I just said. What you're asking for is parity. You really have to go to your representatives.

Thompson: Our representatives already – I'm coming to your guys. You guys represent Cablevision corporate, correct?

Monopoly: Yes

Thompson: We're talking about the Cablevision brand.

Comstock: Well, the terms and conditions that are at the bargaining table will be negotiated at the bargaining table. We're really not here to talk about that, so I appreciate your position. I understand what you're saying. But at the end of the day what we have in common is the customer. What we have to do is we have to deliver on our promise. We have to follow through

on that before we – so that customers are getting good value. They like us as a company. They don't want to select somebody else. That we all have in common and that's where the focus has got to be. As it relates to negotiating terms that we're talking about that's --

Thompson: But what about – you're saying our customers, right. When our customers look at a Cablevision employee who can't even afford to have a family; who can't even afford to put food on his table; who has to make a choice between paying rent or buying medical supplies for their kids, how does that look to the customer when they see this company, they have the right trucks out here. They have the beautiful emblem and everything, but the people that they work for, -- you brought up a list of other companies and stuff like that. You have another company, Wal-Mart. They're going through the same thing. People are not going to Wal-Mart now because they cheat – they pay their employee terrible. They can't even afford to live in New York City…. So my point to you guys is, and you guys are working with the brand, there's a terrible stain on the brand right now. I know the truck look pretty. The new logo look nice, but it all looks terrible when you have this stain when people see how you guys are treating the employees and you refuse to give them parity in Brooklyn.

Comstock. You make your point loud and clear. Does anyone have some other questions?

[Other questions are asked by other employees]

Appendix B

Transcript of relevant portions of Dolan's speech on September 9, 2014

Because of the situation here in Brooklyn there isn't a whole lot that I can talk to you about. I am just basically not allowed to discuss your relationship with the company…

My executives have come to talk to you. I know at times about… where the company is going… but we are really very, very limited in what we are allowed to discuss between each other because we have a party between us that represents you. And… the law is really very clear about it; that when this group, they voted back around 3 years ago…that became … the union became your voice. I can tell you we have had lots of discussions with your union and, but having this discussion … just hasn't been allowed, and still is not that allowed.

But the reason I decided to come was because I am confused because… my folks tell me and I know that there was a decertification petition that was signed by a lot of you folks and it looked like this group wanted another chance to say who they wanted to represent them… And then back in July … I got a letter from the union that says they have 189 signatures that say that this group… still wants to be represented by the union and that we shouldn't be deluded to think… that its anything else. Except that it didn't actually say… that you wanted a union. It said that you wanted more pay, which actually to be honest with you, why did only 189 of you want more pay?... So the union says that this is an indication of what you really want and I think it's time that I find out what you really want.

So how do we find out what you really want? … There is no way to have an actual vote… a binding vote… because the union has blocked that… It's blocked that for the last year and a half with what they call unfair labor practices… They are basically saying that if we had to vote, that you were so intimidated or overly influenced by the company that it wouldn't be a fair vote…

So I still want to know and there is a reason I want to know, but the way to find out is tomorrow we are going to … take a poll. We are essentially going to have a vote… And it's going to be confidential. It's voluntary. It's going to be conducted by a third party that is sworn… not to reveal any of the individual information. They are actually not even going to collect it… I will not know and neither will your union know and neither will you know how your fellow workers here voted….

So assuming we are going to do that tomorrow and once we do find out, that's going to change at least Cablevision's behavior, either one way or the other. If in fact the mind of this group is that they want a union… then … we will double our efforts to get a contract done. We are already … putting in more effort that is legally required of us… In fact, we have made a complaint to the Labor Board that the union… is stalling on the contracts…

Now what does that mean? Does that mean that the company is going to change it's position. It means we will talk more. We will… come to the table every day… Won't necessarily be me, but my people will be there every day, and if we need to, we can lock

ourselves in a room until… we agree. But if you … tell me tomorrow that you want a union, you need a contract, and we will do everything we can to get a contract.

The issues like parity in pay etc., do not expect Cablevision to change its position on that. Our position is that what we have offered is parity. It's just that your representatives have asked for more things than what the other employees are getting and that has to come from somewhere, and that's why the actual take-home pay is less. But when you add it all together, it's our position that they are equal. And I will not change the position of the company… to give you a deal better than your fellow employees in other places like the Bronx and Freeport…

Now if you vote that you don't want a union…; I can't make the union go way. But I will go to the union and will tell them that this… is what your mind is and I will try to negotiate a way for the union to withdraw; and I am willing to… go pretty far to help them do that if they recognize that they are not wanted here anymore. I think it would be fair, if my lawyers let me… to even reimburse them for the costs that they had here … so that we can proceed the way you want to proceed. .. But if I am unable to persuade them then to have an actual vote; but either way… you vote, we are going to try and bring this a head… I think that you are not doing well in this environment and I can tell you that Cablevision isn't doing well in this environment and that's troublesome because in the end… you need a strong company. You need a company that can compete that can launch new products…

Okay. So got some questions?

Q. So parity, that's all we are asking for that's all.

Dolan … I mean as far as parity goes … look I am trying to think of a good analogy for you… If your union was coming in and asking for the same environment, right and the same work rules… that everybody else lived under… then you would have probably, … close or equal wage. But that is not what's going on here… They are asking for a lot more of those things and they say, oh and by the way, we also would like to get paid the same…. Well, the things that they are asking for cost money and they are essentially asking for a better deal than what everybody else at the company has. And then that's our position and … you can argue with it, but the fact is, that you are not asking for the same thing. You can sit there and say, well, the things that we are asking for don't mean anything. Well if they don't mean anything then don't ask for them. They do mean something and they do cost money. And they do change the expense to the company that … change the entire relationship… And by the way they are the kinds of things that make it even harder for the company to operate. You know, things like scope of work… What you can and can't work on… Those kinds of things… That doesn't exist anywhere else. You know employees at other parts of the company… regularly change what they are dong. They can't do that here. It's just what they are asking for is more expensive than what it takes in other places and that has to come from somewhere. And if you want parity, you have to take everything into account. You can't just say, I want parity here and parity here, but I want to be better here and better there, but those don't count…

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Dolan: And as you said, it's about job security… and not necessarily about the money first. Well, what your union is asking for is more job security than everybody else has. So fine. But then there has got to be a give back on the other side…. You can't just say… I want a better deal than the other folks who work in the other places here at Cablevision. That's not fair. It's not – and I don't agree with you, by the way, … that the other places aren't – I mean, they work hard too… They work the same kinds of shifts, the same kinds of things that you do… You don't help yourself by thinking… I am different than everybody else… and I deserve more.

Q. I never said I wanted more.

Dolan: Well except that you do want more. I mean, it's a disguised way of asking for more, but you sit there and you say, I want all the good things… that the other employees have, plus I want these other things that they don't have… And that's asking for more… If you are at the bargaining table… and you sit there and you say the most important thing to us is job security… I want more job security than anybody else; you could have more job security than anybody else but the expense of that … you bear so that you are equal with the other employees. You can't… sit there and say, I want more than them in this, this, this and this … and then when it comes to this…I want to be the same….

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Q: ….My thing is I want to forget this politics and … try to get this money. I want to find out what we are going to do about this. All a lot of politics. I want to get this money. That's what I want to do.

Dolan: Look, you know what? We are going to do our best to bring … to a head. I don't like it any more than you like it…. I haven't been here for three years because I couldn't even talk to you. So how … do I change things for you? I mean, I can't even have a discussion with you about it, let alone change anything. I have to go through the union. That's the decision you made. Now look, tomorrow… you are going to have the opportunity to express yourself. I hope that you can go and express yourself, either way, and without fear of reprisal, without worrying about who is going to know what you did… I am doing everything I can to put that environment together tomorrow… I understand you don't trust the company…and I might ask you, by the way, you who does not trust anything that the company does, why do you work here? I mean… this isn't the only job in the world… There is a company called Verizon that has a union that operates in the same place we do.

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Dolan: Let me just address because we talked a lot about job security… And I am going to try and do this in a way that the guy in the suit over here doesn't jump and tell me … that I am going to court… So let me try from a generic point of view, okay, rather than talk specifically about you. In general… job security… it's not a function of a guarantee of… being employed as much as it's … of an assurance that you are needed as an employee… Because no matter what anybody gives you as a guarantee,… it might extend your employment beyond the time that you are need, right, but I you are not needed, you don't have job security no matter what any contract or anybody says to you because contracts come to an end, and … time

moves on, and if you are not needed.. then you don't have job security. So how do you make sure… you stay … in a position where you can feed your families… where you can earn a decent pay…? The best way that you can do that… is to stay needed. And in this case – here is where I will get in trouble … let's see, I have to think about it for a second.

In a case where you are in an industry … that's evolving… the best way to have job security is to stay on top of what the newest developments are… and being abort to help the company and push it forward and be successful… So that means that … you can't just sit and say, well, I know how to put tis connector together with this and do this with that and that's not enough because it's not enough. It's not enough to give you job security no matter what any contract says. It's not enough. You have to evolve. And I will tell you that from a philosophical point of view – and I am going to be in trouble, but… at Cablevision what we want to do with all of employees, … is to train them and keep them ahead. The real job security will be here as if for some reason the company… disappears… that you are the best trained technicians in the Northeast… That you are completely up to speed … with how new IP systems work… and how these companies operate, how we dispatch etcetera; that you have the newest tools and you can walk into any other company that's doing this kind of work and we are not the only company. There [are] tons of companies… and you can say I am fluent … in XYZ programing. I know how to operate like this. I know how to handle a computer in a home. I know how to do this, that and the other thing. That makes you valuable… I would hope that you would earn more money and that's the way that you truly have job security because like I said, contract come to an end… They could say if you are not needed … when the contract comes to an end, then you are not needed and it's your job, personally your responsibility … to say needed. That's the way our economy works. And if you do that you will be very successful. And you will be very good at your job and you will have the esteem of your colleagues and … companies will want you. And if you don't do that… you are not going to be needed. And that's the way we want to operate the company. That's the way it works.

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Q: … You say that you can't help us with the new equipment that you gave to the other technicians. I feel that's a disservice, not just to us, but it's a disservice to your customers because if we are still using this old technology and you have new technology, we can get this job done faster. We can go to do more jobs. And you are saying that you can't give that to us is a disservice because now our customers… we can't help them….

Dolan: Look tomorrow we are going to have a vote. One way or another… Either we will work to ask the union to leave or we will work with the union for a contract…. We have to figure out how to get you those tools…. But it's got to be part of the whole contract. I mean… while we are in this position with no contract… and by the law, this is what the law – my attorneys say, I am supposed to keep everything exactly the same as they [were when] you voted in a union. That's the law… Until we have a new contract … and then whatever is negotiated in the contract is it. That's the way it works. If I change anything… then the union can go back and … file a grievance… We either need a contract… or we need to have a direct relationship. We got to have one or the other.

Appendix C

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.
To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten employees with arrest when they engage in union activity on company owned parking lots.

WE WILL NOT interfere with our employees' right to select a bargaining representative of their own choosing, by conducting polls, in the absence of any legitimate purpose, as to whether employees wish to be represented by the Communications Workers of America, AFL-CIO

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the rights guaranteed to them by Section 7 of the Act.

CSC Holdings LLC and Cablevision Systems of New York City Corp
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

Two MetroTech Center
Jay Street and Myrtle Avenue
Brooklyn, NY 11201-4201
718-330-2862. Hours: 9 a.m. to 5:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/29-CA-134419 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 718-330-2862.